

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

FILED

November 17, 1998

Cecil W. Crowson
Appellate Court Clerk

STEVE Q MANCHESTER

}

WARREN CHANCERY

}

No. Below 6456-GSWC

Plaintiff/Appellee

}

Hon. Barry Medley

vs.

}

Judge

}

INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA AND
BRIDGESTONE/FIRESTONE, INC.

}

No. 01S01-9711-GS-00246

}

}

Defendants/Appellants

}

AFFIRMED

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by defendants/appellants for which execution may issue if necessary.

IT IS SO ORDERED on November 17, 1998.

PER CURIAM

**IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE**

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STEVE Q. MANCHESTER,)	
)	
Plaintiff/Appellee)	WARREN CHANCERY
)	
v.)	NO. 01S01-9711-GS-00246
)	
INSURANCE COMPANY OF THE)	HON. BARRY MEDLEY,
STATE OF PENNSYLVANIA and)	CHANCELLOR
BRIDGESTONE/FIRESTONE, INC.,))	
)	
Defendants/Appellants)	

For the Appellants:

B. Timothy Pirtle
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McMinnville, TN 37111

For the Appellee:

Frank D. Farrar
William Joseph Butler
Farrar & Holliman
102 Scottsville Highway
P.O. Box 280
Lafayette, TN 37083

MEMORANDUM OPINION

Members of Panel:

Justice William M. Barker
Senior Judge John K. Byers
Special Judge Robert E. Corlew, III

AFFIRMED
Judge

BYERS, Senior

OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995).

The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. *See Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The trial judge found the plaintiff had sustained a 15 percent permanent partial disability to his left arm.

The defendant questions whether the evidence preponderates against the permanent partial disability award.

We find the evidence does not preponderate against the findings of the trial court and affirm the judgment.

The plaintiff had a previous injury to his right hand for which he was compensated. After the injury, the plaintiff continued to work as a tire builder for

the defendant. The job required considerable lifting, etc. The plaintiff used his left arm to do the heavy work more than he did his right arm because of the previous injury. The plaintiff developed a gradual injury to his left arm. The physician whom the defendant suggested the plaintiff see and the plaintiff's examining physician diagnosed his injury as medial epicondylitis of the left elbow, or tennis elbow.

Dr. Douglas Haynes, an orthopedic surgeon whom the defendant recommended to the plaintiff, treated the plaintiff for some time and concluded he had a one percent permanent medical impairment to the left arm as a result of the epicondylitis. This assessment came after surgery was performed on the plaintiff's elbow. Dr. Haynes testified his evaluation was based upon the *AMA Guides*.

Dr. Robert Landsberg, an orthopedic surgeon, examined the plaintiff for purposes of evaluation. Dr. Landsberg was of the opinion the plaintiff sustained a three percent permanent medical impairment as a result of the epicondylitis. He went beyond the *AMA Guides* as used by Dr. Haynes but explained that the guidelines permitted an evaluation beyond those set up therein.

The trial judge found the plaintiff had sustained a two percent permanent medical disability to the left arm and entered judgment for 15 percent permanent vocational disability to the left arm.

The plaintiff testified concerning the pain he suffered from the use of his left arm and testified his arm was weaker because of the injury.

It is obvious the trial judge based the finding of two percent permanent medical impairment on a division of the one percent and three percent impairment ratings of the respective physicians. From this, he reached the final conclusion that the plaintiff suffered a 15 percent vocational disability to the left arm.

We do not find the evidence preponderates against the judgment of the trial court.

The cost of this appeal is taxed to the defendant.

John K. Byers, Senior Judge

CONCUR:

William M. Barker, Justice

Robert E. Corlew, III, Special Judge